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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Conservatorship of the Person and Estate of
THELMA LOUISE FRAZIER.

PHILLIP H. FRAZIER,

Petitioner and Appellant,

v.

CARL E. FRAZIER et al.,

Objectors and Respondents.

H026237

(Santa Clara County
Super. Ct. No. 1-02-PR152094)

Petitioner Phillip H. Frazier (Phillip),¹ in propria persona in this court as well as in the trial court, son of conservatee Thelma Louise Frazier (Mrs. Frazier), appeals an order of the court approving and ratifying a settlement reached by his brother, objector Carl E. Frazier (Carl), their mother's conservator, in a dispute with Mrs. Frazier's next door neighbor over a foot-and-a-half wide strip of property next to her driveway. Phillip also appeals a subsequent order of the court denying his motion for reconsideration.

FACTS

Mrs. Frazier and her neighbors, the Giuseppe Traino family, lived side by side at 663 and 661 North 15th Street, respectively, in San Jose. The land in dispute was a one-

¹ Convenience, not disrespect, is intended by use of the parties' first names. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 280.)

and-a-half foot strip next to Mrs. Frazier's driveway but on the Traino property. Mrs. Frazier had planted rose bushes and other vegetation on the strip, but in June 2000, she removed the plants and installed a concrete driveway extension with a permit from the City of San Jose. Traino filed a lawsuit to quiet title. (*Traino v. Frazier* No. CV793415.)

In the meantime, Mrs. Frazier, in her 80s, suffered a series of strokes which diminished her mental and physical capacities. On January 14, 2003, Carl was appointed conservator. The next day a settlement conference in *Traino v. Frazier* was held and the matter settled. A written settlement agreement was executed on January 21, 2003. Carl then petitioned the probate court to confirm the settlement. On the hearing date, Phillip objected so the matter was set over for a week. At the next hearing, the court considered all the filed papers and oral argument and granted the petition.

Phillip filed a motion for reconsideration. Carl filed an opposition and the matter was heard and denied on June 19, 2003. This appeal ensued.

ISSUES ON APPEAL

On appeal Phillip contends that his mother "has satisfied every element of adverse possession" to the strip of land in dispute in *Traino v. Frazier* and that his motion for reconsideration should have been granted because his motion "sustained [*sic*] solid and substantial evidence and meet [*sic*] the requirements of Code of Civil Procedure § 1008."

ADVERSE POSSESSION

Phillip asserts that his mother's possession of the strip of property satisfied every element of adverse possession, i.e., she made real property tax payments on the strip, had actual possession of the property which was open and notorious, continuous and uninterrupted for five years, and which was hostile and adverse to the true owner's title, and was either under color of title or claim of right. (Code Civ. Proc., § 325.) Therefore, he concludes, judgment must be entered in her favor. Carl agrees that Phillip correctly stated the elements of adverse possession, but he declares there was a factual dispute as to whether there was sufficient (if any) evidence to show that the Fraziers paid real property

taxes on the Traino property. Since this was an issue of fact settled by negotiations of the parties in consultation with their attorneys, the settlement should not be disturbed on appeal. He states there is a presumption that the order of the lower court is correct.

It is Phillip's burden to show reversible error. (*Walling v. Kimball* (1941) 17 Cal.2d 364, 373.) This he has not done. There is nothing in the record that Phillip points us to or that we found that establishes that the Fraziers paid the taxes on the strip of Traino property. Consequently, there is no basis for us to conclude that the trial court abused its discretion in confirming the settlement. There was no error.

MOTION FOR RECONSIDERATION

Second, Phillip argues that his motion for reconsideration should have been granted. Carl responds that no appeal may be taken from denial of a motion for reconsideration.

The first question is whether the underlying order was appealable. Probate Code section 1301 sets forth the grounds for appeal of conservatorship orders. Subdivision (f) makes appealable orders granting or denying a petition under Probate Code section 2500 et seq. Section 2501, subdivision (a)(2), requires court approval of a settlement which affects (1) title to real property or (2) an interest in real property or a lien or encumbrance on real property. Consequently the order confirming the settlement is appealable.

The next question is whether a motion for reconsideration of an appealable order is itself appealable. "Superior court orders and judgments which are appealable are listed in Code of Civil Procedure section 904.1. However, '[o]rders on reconsideration motions are not specifically listed and the only category in which they might be included is "an order made after judgment.'" (Code Civ. Proc., § 904.1, subd. (b).)' (*Blue Mountain Development Co. v. Carville* [(1982)] 132 Cal.App.3d [1005], 1010.) In *Blue Mountain*, we held that 'the order denying reconsideration may be treated as an order made after judgment' and thus an appealable order, if the original ruling is an appealable order and if the motion for reconsideration is based on new and different facts. [Citation.] However,

if the motion for reconsideration is ‘based on exactly the same [factual] showing offered in support of the original application,’ the order denying reconsideration is not appealable. [Citations.] We have now determined that the better ruling is that a denial of a motion for reconsideration is a nonappealable order.” (*Rojes v. Riverside General Hospital* (1988) 203 Cal.App.3d 1151, 1160.)

Phillip may not appeal denial of the motion for reconsideration. This portion of the appeal is dismissed as taken from a nonappealable order.

DISPOSITION

The judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.